

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Hyung Woo Kim, now known as Tony Kim
and Hyun Hee Kim, husband and wife, and
M&TK Inc, doing business as Tony's Short
Stop.

No. DE 2954

TO: Hyun Woo (Tony) and Hyun Hee Kim
Tony's Shortstop Texaco
326 South Main Street
Montesano, WA 98563

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I. INTRODUCTION

The mutual objective of the Washington State Department of Ecology (Ecology) and Tony and Hyun Hee Kim and M&TK Inc, doing business as Tony's Short Stop (hereafter collectively referred to as "Kim") under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Kim to develop a Cleanup Action process at a facility where there has been a release or threatened release of hazardous substances. This Order requires Kim to complete Remedial Investigation of the facility, develop a Feasibility Study to determine a preferred cleanup strategy and develop a Draft Cleanup Action Plan. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Kim agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Kim's responsibility under this Order. Kim shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as Tony's Shortstop Property and is generally located at 326 South Main Street, Montesano, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).
2. Parties: Refers to the Washington State Department of Ecology and Hyun Woo (Tony) and Hyun Hee Kim and M&TK Inc, doing business as Tony's Short Stop..
3. Potentially Liable Party (PLP): Refers to Hyun Woo (Tony) and Hyun Hee Kim and M&TK Inc, doing business as Tony's Short Stop.
4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Kim:

- (1) M&TK, Inc. is stated by Mr. Kim to be the owner of the property and operator of the service station, under a lease from Mr. Kim.
- (2) The Grays Harbor County Assessors Office records list Hyun Woo and Hyun Hee Kim as the owners of the property at the above address, Parcel #075300200500, and as described in the attached legal description, Exhibit B. Mr. Kim is now known as Tony Kim.
- (3) Based on Ecology sampling of two monitoring wells and seven push probe borings located at or adjacent to the site, gasoline range petroleum hydrocarbons have been released to soils and groundwater at the Site.
- (4) Tony's Shortstop has not been and is currently not in compliance with Upgrading Requirements for Existing Underground Storage Tank (UST) Systems, WAC173-360-310.
- (5) Ecology has completed a Site Hazard Assessment (SHA) of the site, resulting in a ranking of 3. Ranking ranges from 1 to 5, with 1 representing the highest relative risk and 5 the

lowest relative risk. The ranking may change if additional, planned testing indicates that air or surface water impacts have occurred.

(6) This type of contamination represents a threat to human health and the environment.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations without any express or implied admissions by Kim.

1. M&TK, Inc. is the operator of a Texaco service station at the site.
2. Tony and Hyun Hee Kim are an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because they are the owners of record of property where there has been a release or threatened release of hazardous substances above cleanup standards established by the Model Toxics Control Act.
3. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.
4. Based upon credible evidence, Ecology issued a potentially liable person status letter to Tony Kim dated September 20, 2005, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Tony Kim is a potentially liable person (PLP) under RCW 70.105D.040 and notified Tony Kim of this determination by letter dated October 26, 2005. By letter dated 12/21/05, Ecology issued an additional determination that Hyun Hee Kim and M&TK are also PLPs for the site.
5. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Kim take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. Decommission Existing Underground Storage Tanks

Kim shall decommission and remove the existing underground storage tanks that are not in compliance with the requirements for existing UST systems no later than 60 days after the effective date of this order. Work shall be done in accordance with the regulations for permanent closure and change-in-service, WAC 173-360-385.

2. Remedial Investigation (RI)

Kim shall prepare a work plan to perform remedial investigations necessary to determine the extent and nature of contamination present on the Site. The work plan shall include a site specific health and safety plan (HASP) and a sampling and analysis plan (SAP) in compliance with WAC 173-340-810 and 820, respectively.

A. Scope of Work:

(1) RI Work Plan: The RI Work Plan shall describe all activities to be taken to characterize both soils and groundwater at the site, in accordance with WAC 173-340-350 (7) including the results of work previously conducted at the site to remove underground storage tanks, buildings, and contaminated soils and shall include a schedule for performing the following tasks.

(2) Investigation: Collect data necessary to adequately characterize the nature and extent of soil and groundwater contamination, in accordance with WAC 173-340-350 (7), utilizing professionals qualified to perform the tasks required and, when applicable, in accordance with WAC 308-15.

(3) Schedule: A draft RI Work Plan shall be submitted to Ecology within 60 days of the date of this order. A final work plan shall be submitted to Ecology within 30 days of the receipt of Ecology's comments. The investigation shall be

performed according to the schedule set forth in the approved RI Work Plan as noted above.

3. Remedial Investigation/Feasibility Study (RI/FS)

Based on the results of remedial investigations, Kim shall prepare a draft RI/FS report in accordance with WAC 173-340-350 that provides information adequately documenting the nature and extent of soil and groundwater contamination and presents potential options and a preferred option for the remediation of the contamination located at the Site, in accordance with WAC 173-340-360.

A. Scope of Work:

(1) RI/FS: The RI/FS shall report the results of remedial investigations at the Site including vertical and lateral distribution of contaminants in soil and groundwater and concentrations of contaminants of concern in both media. The report shall include any conclusions that can be drawn regarding potential off-site contribution or migration. Additionally, the report shall include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented for soils and groundwater.

(2) Schedule: The draft RI/FS report shall be submitted within 120 days of the finish of remedial investigation activities performed in accordance with the approved work plan as noted above. Kim shall submit a final RI/FS report within 30 days of the receipt of Ecology's comments.

4. Draft Cleanup Action Plan (CAP)

Upon Ecology approval of the RI/FS, Kim shall prepare a Draft CAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site, and addresses the expectations for cleanup alternatives, in accordance with WAC 173-340-370.

A. Scope of Work:

(1) CAP: The Draft CAP shall include a general description of the proposed remedial action, cleanup standards from the RI/FS and a rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local and state laws pertinent to the proposed cleanup action.

(2) Schedule: The Draft CAP shall be provided to Ecology for its review within 90 days of Ecology's review and acceptance of the final RI/FS.

If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

B. Remedial Action Costs

Kim shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed subsequent to the issuance of the Order. These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. Kim shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared

quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, Kim shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Marv Coleman, Site Manager/Inspector
Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
Tel.: (360) 407-6259
e-mail: mcol461@ecy.wa.gov

The project coordinator for Kim is:

Tony Kim
Tony's Shortstop Texaco
326 South Main Street
Montesano, WA 98563
Tel: (360) 249-4981

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Kim, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology and Kim may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. Kim shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that Kim either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Kim's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Kim. Kim shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Kim where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Kim unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of Site property access.

G. Sampling, Data Reporting, and Availability

With respect to the implementation of this Order, Kim shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

All sampling data shall be submitted to Ecology according to the requirements of WAC 173-340-840(5), in printed form and in electronic form capable of being transferred into the department's data management system. Electronic data submittal requirements are provided at <http://www.ecy.wa.gov/eim/>.

If requested by Ecology, Kim shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by Kim pursuant to implementation of this Order. Kim shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by Kim or his authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F of this Order, Ecology shall notify Kim prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, and since no plan exists, Ecology has developed a public participation plan in conjunction with Kim. See Exhibit C.

Ecology shall maintain the responsibility for public participation at the Site. However, Kim shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify Kim prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Kim that do not receive prior Ecology approval, Kim shall clearly indicate to the audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) Montesano City Hall
125 North Main Street
Montesano, WA 98563
- (b) W.H. Abel Memorial Library
12 North Main Street
Montesano, WA 98563
- (c) Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning

documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, Kim shall preserve all records, reports, documents, and underlying data in his possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request by Ecology, Kim shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, Kim has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.

(b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(c) Kim may then request Ecology management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of Kim's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:

- (a) The deadline that is sought to be extended;
- (b) The length of the extension sought;
- (c) The reason(s) for the extension; and
- (d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Kim to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

- (a) Circumstances beyond the reasonable control and despite the due diligence of Kim including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Kim; or
- (b) Acts of God, including fire, flood, earthquake, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (c) Endangerment as described in Section VIII.M of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Kim.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Kim written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- (a) Delays in the issuance of a necessary permit which was applied for in a timely manner;
- (b) Other circumstances deemed exceptional or extraordinary by Ecology; or
- (c) Endangerment as described in Section VIII.M. of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Kim. Kim shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Kim to cease such activities for such period of time as it deems necessary to abate the danger. Kim shall immediately comply with such direction.

If, for any reason, Kim determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Kim may cease such activities. Kim shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction Kim shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Kim's cessation of activities, it may direct Kim to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Kim's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Kim to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Kim regarding remedial actions required by this Order, provided Kim complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions

necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Site

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Kim without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Kim's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Kim shall provide a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Kim shall notify Ecology of said transfer. Upon transfer of any interest, Kim shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the Site.

P. Compliance with Applicable Laws

1. All actions carried out by Kim pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. A list of the required permits known at the time of entry of this Order have been included in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), Kim is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Kim shall comply with the substantive requirements of such permits or approvals. A list of such permits and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, have been included in Exhibit D.

Kim has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under

this Order. In the event either Ecology or Kim determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Kim shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Kim shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Kim and on how Kim must meet those requirements. Ecology shall inform Kim in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Kim shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and Kim shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

Kim agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Kim, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Kim shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of

Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Kim's receipt of written notification from Ecology that Kim has completed the remedial activity required by this Order, as amended by any modifications, and that Kim has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.

2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

3. In the event Kim refuses, without sufficient cause, to comply with any term of this Order, Kim will be liable for:

(a) Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

(b) Civil penalties of up to \$25,000 per day for each day it refuses to comply.

4. The terms of this Order are not appealable to the Washington Pollution Control Hearings Board. The terms of this Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

TONY KIM

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Tony Kim

Rebecca S. Lawson, P.E

Hyun Hee Kim

Tony's Shortstop Texaco
326 South Main Street
Montesano, WA 98563
360) 249-4981

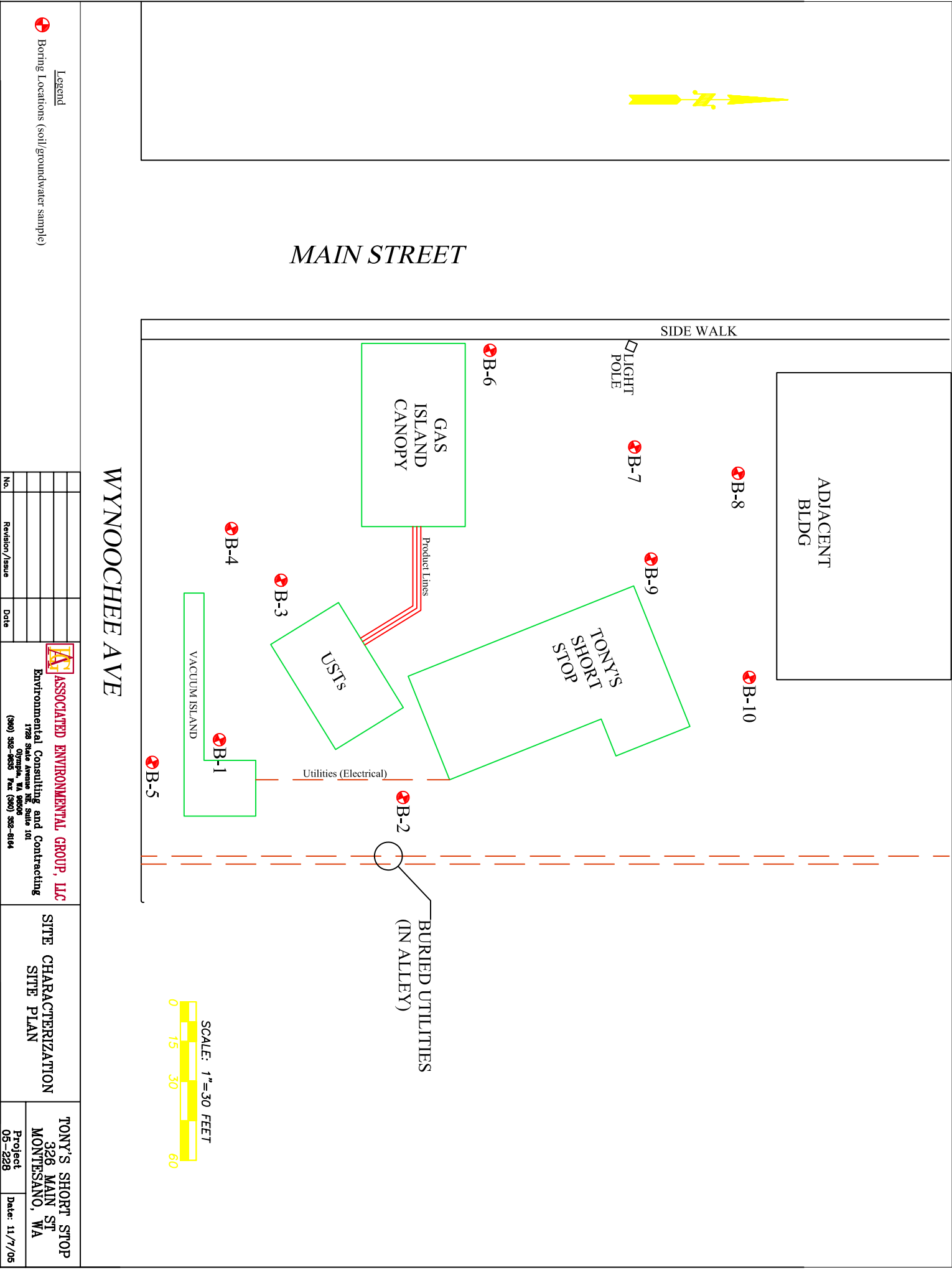
Regional Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

M & TK Inc

By:_____

Title:_____

EXHIBIT A Site Diagram



ASSOCIATED ENVIRONMENTAL GROUP, LLC
Environmental Consulting and Contracting
1728 State Avenue NE, Suite 101
Olympia, WA 98506
(360) 352-8635 Fax (360) 352-8164

**SITE CHARACTERIZATION
SITE PLAN**

**TONY'S SHORT STOP
326 MAIN ST
MONTESANO, WA**

Project: 05-228
Date: 11/7/05

EXHIBIT B

Legal Description

Mace Talbert Magills Lot 4 LS N. 4' LS ST; Lots 5 & 6 LS ST BLK 2.

EXHIBIT C

Public Participation Plan

EXHIBIT D

Applicable Permits and Substantive Requirements

- Chapter 70.105D RCW (Model Toxics Control Act), and Chapter 173-340 WAC (MTCA Regulations);
- Chapter 70.105 RCW (Washington State Hazardous Waste Management Act), and Chapter 173-303 WAC (State Dangerous Waste Regulations);
- Chapter 90.48 RCW (State Water Pollution Control Act);
- Chapter 70.95 RCW (Solid Waste Management – Reduction and Recycling);
- Chapter 70.94 RCW (Washington Clean Air Act);
- Chapter 173-160 RCW (Minimum Standards for Construction and Maintenance of Wells);
- Chapter 43.21C RCW (State Environmental Policy Act), and Chapter 197-11 WAC (State Environmental Policy Act Rules);
- Washington Industrial Safety and Health Act (WISHA);
- Olympic Region Clean Air Agency – Regulation I;
- City of Montesano Building Codes